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SUBJECT: MEETING WITH LEBANESE TO DISCUSS OPTIONS FOR
HARIRI TRIBUNAL

1. BEGIN SUMMARY: Ralph Riachy, Chief Justice of Lebanon's Supreme Court, and Choucrist Sader, President of the Legislative Service of Lebanon's Ministry of Justice, discussed options for trying the persons responsible for the assassination of former Lebanese Prime Minister Rafiq Hariri with USUN Legal and Political Officers and Department attorneys on February 24. Charge d'Affaires Caroline Ziade and Counselor Sami Zeidan of the Permanent Mission of Lebanon also attended the meeting at UN Headquarters. In a wide-ranging discussion, Riachy and Sader sought political support for an international tribunal established by the Security Council under Chapter VII that would try Lebanese and other suspects outside Lebanon. (Comment: On March 2, following their meetings with UN lawyers, the team indicated that they had revised their thinking and were no longer considering a tribunal established by the Council under Chapter VII. Report to follow septel. End comment.) Noting that the mandate for the International Independent Investigation Commission (UNIIIC) will end in June 2006, they stressed the need to act quickly to establish the framework for a tribunal (although not necessarily the court itself) by then. END SUMMARY.

PREFERRED MODEL FOR THE TRIBUNAL

2. Sader and Riachy argued that the Council, through a Chapter VII resolution, should establish an international tribunal on the model of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). They made five main arguments for an international tribunal: (1) to respond to an act of terrorism against the international community; (2) to enable Lebanese and non-Lebanese suspects to be tried under the same standards and procedures; (3) to permit a speedy, efficient trial; (4) to provide legitimacy in Lebanon and Syria for the trial; and (5) to avoid security problems. The tribunal would comprise trial and appellate courts and apply Lebanese substantive criminal law, which they asserted is sufficiently broad and extraterritorial in scope to ensure that all participants and conspirators, whether in or outside Lebanon, could be prosecuted. Sader and Riachy proposed that the tribunal try all defendants in one trial and try missing defendants in absentia.

THE ISSUE OF IMMUNITIES

3. Establishing an international tribunal would make it possible to try suspects who would otherwise have immunities

in Lebanon, Sader and Riachy said. A domestic procedure could be constrained by Lebanon's bilateral agreement with Syria, which, as they described it, appears to prohibit the extradition to Lebanon of Syrian nationals, provide official acts immunity for Syrian officials found in Lebanon or extradited from third countries, and give senior Syrian officials an additional form of special immunity. (Note: The Lebanese have provided the U.S. with a copy of the agreement, as well as relevant penal code and procedural provisions. End Note.) Without an international tribunal, it also would be difficult to prosecute Lebanese officials, they said. To bring charges against Lebanon officials, a Lebanese court would need to seek a Parliamentary waiver of immunity and then try the officials in special courts.

PROVIDING A SPEEDY TRIAL

¶4. An international tribunal using the common law adversarial system would also be speedier and more efficient than a trial under Lebanese procedural law, Sader and Riachy argued. Under the common law process, all of the evidence that the UNIIIC garners and provides to the Lebanese government could be placed directly before the court at trial because it could issue indictments or complaints without a grand jury. In contrast, under Lebanon's "juge instructive" process, the investigating judge would have to review all the evidence, take additional statements, and complete other time-consuming steps before charges could be filed.

ENSURING LEGITIMACY AND SECURITY

¶5. Sader and Riachy stressed that for security reasons and

to protect the court's credibility, the prosecutor and most of the judges should not be Lebanese. The prosecutor would need "complete independence," they said. They expressed concern for the safety of the family in Lebanon of the prosecutor and judges (including emigres), noting that there have been five murders and 14 attempted murders in Lebanon since Hariri's assassination. They also argued that any possible Syrian retaliation during the trial would cast a shadow that could limit the court's ability to operate.

¶6. To ensure the tribunal's legitimacy, Sader and Riachy said the tribunal should be outside Lebanon. To avoid the appearance of politicization, the court should not be located anywhere under the jurisdiction of France, the UK, or the United States. Accordingly, the UK's offer to host a court at its military base in Cyprus would not be acceptable politically, even though Cyprus would be the most convenient venue. Instead, they argued for placing the court in a place with an existing UN presence (e.g. The Hague or Vienna) and asked whether a UN site might be available in Cyprus. They also thought it would be simpler for the UN to revise its existing Headquarters Agreement with either the Netherlands or Austria than to negotiate a new agreement with a country without a UN presence. Sader and Riachy discussed the possibility of placing the tribunal in Egypt or another state in the Middle East but expressed concerns about security arrangements in Egypt.

WHY OTHER MODELS MIGHT NOT WORK

¶7. Sader and Riachy expressed reservations about other types of tribunals. They rejected the Lockerbie model as not responsive to their security concerns. They also expressed concerns about establishing a tribunal similar to the Sierra Leone Special Court, under which the Council, through a resolution, would request the Secretary-General to negotiate an agreement with the Lebanese government to establish a tribunal. Sader and Riachy doubted that Lebanon's Parliament

had the political capacity to ratify an agreement between Lebanon and the United Nations to establish a tribunal. They said the ratification process would be slow and ultimately would likely fail. If the Council wished to adopt a Chapter VII resolution establishing a tribunal, they thought that Lebanon's Council of Ministers could advise the UN of Lebanon's assent.

COSTS

¶18. Sader and Riachy said the tribunal they envisioned would be significantly less expensive than the ICTY because it would address only one crime. Expressing confidence that the other Arab states would support the tribunal, they suggested it could be voluntarily funded. They then asked whether a tribunal established by a Security Council resolution under Chapter VII could be funded through voluntary contributions. (Comment: There would be no legal bar to financing such a tribunal through a voluntary trust fund. The ICTY and ICTR both were funded through assessed contributions, but the assessment scale (half regular budget, half peacekeeping) took considerable time to resolve. The Sierra Leone Special Court was voluntarily funded for the first few years of its existence but because of inadequate contributions, it is now receiving assessed funds from the Regular Budget as well as voluntary contributions. The Khmer Rouge Tribunal, at this point, is funded voluntarily. End Comment.)

OTHER ISSUES

¶19. Sadr and Riachy also assured the U.S. delegation that trying all defendants together would not prejudice Lebanon's ability to pursue other prosecutions in the future. If the investigation and trial of suspects in the Hariri assassination reveal links between the conspiracy to assassinate Hariri and subsequent assassinations, they said Lebanese prosecutors could bring separate charges at a later time without facing the problem of double jeopardy. They also said Lebanese law is flexible enough to permit Lebanon to continue to detain the eight Lebanese suspects currently in custody.

¶10. At the conclusion of the meeting, the Lebanese delegation thanked the U.S. delegation and expressed interest

in meeting again soon to share perspectives on their meetings with the French and other delegations.

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